



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

#### [EPA-R10-OAR-2015-0397: FRL - 9947-53-Region 10]

Approval and Promulgation of Implementation Plans; Idaho:

Stationary Source Permitting Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve, and incorporate by reference, revisions to the Idaho State Implementation Plan submitted on May 21, 2015. In the submission, Idaho revised stationary source permitting rules, including the addition of facility-wide emission limits and nonmetallic mineral processing plant regulations. Idaho also added an alternative method for stationary sources to comply with sulfur content of fuels limits, and updated provisions to account for changes to federal air quality regulations. The EPA proposes to approve the submitted revisions as consistent with the Clean Air Act and the EPA's implementing regulations.

**DATES:** Comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2015-0397, at <http://www.regulations.gov>. Follow the online instructions for submitting

comments. Once submitted, comments cannot be edited or removed from <http://www.regulations.gov>. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<http://www2.epa.gov/dockets/commenting-epa-dockets>.

**Docket:** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information, the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

**FOR FURTHER INFORMATION CONTACT:** Kristin Hall at (206) 553-6357, or [hall.kristin@epa.gov](mailto:hall.kristin@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, it is intended to refer to the EPA.

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### **I. Background**

Section 110 of the Clean Air Act (CAA) governs the process by which a state submits air quality protection requirements to the EPA for approval into the State Implementation Plan (SIP). The SIP is the state’s plan to implement, maintain and enforce the National Ambient Air Quality Standards (NAAQS) set by the EPA. Idaho regularly updates the Rules for the Control of Air Pollution in Idaho (IDAPA 58.01.01) to reflect changes to the NAAQS and to improve implementation, maintenance and enforcement of those standards. We note that Idaho incorporates by reference portions of certain federal regulations directly into the SIP. The state generally submits an annual update to the EPA to keep rules consistent with federal requirements.

### **II. State Submission**

On May 21, 2015, Idaho submitted revisions to state air quality rules at IDAPA 58.01.01 to the EPA for approval into the SIP. Idaho adopted these rule changes on November 19 and November 21, 2014. The state provided notice and an opportunity for

public comment and hearing on the changes. Notices were published in the *Idaho Administrative Bulletin* and public hearings were held on September 9 and October 7, 2014. We have evaluated Idaho's submission and propose to find the state has met the requirements for reasonable notice and public hearing under section 110 of the CAA.

### **III. Analysis of Submitted Revisions**

#### **A. Facility-Wide Emissions Cap Rules**

In the submission, Idaho revised the rules that permit construction and operation of stationary sources. Idaho's changes give certain minor sources the option to apply for facility-wide emission limitations. These limitations, or caps, when incorporated into a minor source permit to construct or Tier II operating permit, are intended to allow minor sources to operate more flexibly, without having to request permit modifications for certain process changes.

For example, semiconductor manufacturing facilities make many equipment and process changes as they develop new products and technologies. However, many equipment and process changes do not warrant extensive review as a permit modification. The intent of the facility-wide emissions cap is to set a cap on emissions from a facility, while allowing process changes under certain conditions that may increase emissions. As long as facility emissions stay below the cap and the process changes do not trigger new requirements, the source may be permitted to construct and operate.

The new Idaho rules for limiting emissions from minor sources are called the facility-wide emissions cap rules, or "FEC" rules, codified at IDAPA 58.01.01.175 through 181. These rules lay out the requirements a minor source must meet to request a FEC limit, and the method for determining the limit. A FEC limit is expressed as tons

per year, on a 12-month rolling basis, and may be applied to any criteria pollutant or hazardous air pollutant. The FEC rules do not provide for issuance of a stand-alone permit. Rather, owners or operators of eligible facilities may request a FEC limit be incorporated into a new or existing permit to construct or Tier II operating permit. As stated above, only minor sources are eligible. These include sources that request an emission limit to avoid major source permitting, otherwise known as synthetic minor sources.

In our review, we have evaluated the addition of the FEC option to determine if the revised minor source permit to construct and Tier II operating permit programs continue to comply with the CAA and the EPA's implementing regulations. We propose to find that they do, and that the FEC rules are approvable for the reasons stated below.

First, the FEC rules contain adequate provisions to prevent sources operating under a FEC limit from causing or contributing to a violation of the NAAQS. CAA section 110(a)(2)(C) requires "...regulation of the modification and construction of any stationary source...as necessary to assure that the [NAAQS] are achieved." The EPA's implementing regulations for minor sources, set forth in the Code of Federal Regulations (CFR) at 40 CFR 51.160 through 164, require a state to have procedures to prevent construction or modification of a source if it will result in a violation of a pollution control strategy, or if it will interfere with the attainment or maintenance of a NAAQS.

The FEC rules ensure maintenance of the NAAQS by limiting the option to obtain a FEC limit to minor sources and requiring the applicant to demonstrate that operating under the FEC limit will not cause or contribute to a violation of a NAAQS. As stated in IDAPA 58.01.01.176.02.a, major sources, or sources undergoing a major modification,

cannot obtain a FEC limit. Moreover, by its terms, the FEC limit is set below major source thresholds. The FEC rules at IDAPA 58.01.01.178.03 through .04 also require recordkeeping and reporting, including an annual report, demonstrating compliance with the FEC limit(s) and maintenance of the NAAQS.

Second, the addition of the FEC option does not alleviate any of the application requirements for either the minor source permit to construct program or the Tier II operating permit program. The EPA has already approved Idaho's application procedures for both programs. The EPA approved revisions to Idaho's minor source permit to construct application procedures most recently on January 16, 2003 (68 FR 2217).<sup>1</sup> Similarly, the EPA approved revisions to Idaho's Tier II operating permit program most recently on November 26, 2010 (75 FR 72719).<sup>2</sup>

In sum, we are proposing to approve and incorporate by reference the FEC rules at IDAPA 58.01.01.175 through 181 into the Idaho SIP, except as the rules relate to hazardous air pollutants. Hazardous air pollutants are regulated under CAA section 112, and are not appropriate for approval into the SIP. The SIP includes provisions related to attainment and maintenance of the NAAQS, and other specific requirements of CAA section 110. We are also proposing to approve and incorporate by reference the revisions to IDAPA 58.01.01.201 *Permit to Construct Required* and IDAPA 58.01.01.401 *Tier II Operating Permit* to appropriately cross-reference the FEC rules. However, consistent with our previous action on November 26, 2010, we are not approving section .01.a and

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<sup>1</sup> EPA did not approve section .03 of IDAPA 58.01.01.201 because it is related to toxic air pollutants and not the criteria pollutants or other requirements of CAA section 110 (January 16, 2003; 68 FR 2217, at page 2221).

<sup>2</sup> The EPA did not approve section .01.a and section .04 of IDAPA 58.01.01.401, related to alternative emission limits and compliance date extensions (November 26, 2010; 75 FR 72719, at page 72723).

section .04 of IDAPA 58.01.01.401 because the provisions allow for unbounded director's discretion (75 FR 72719).

## **B. Nonmetallic Mineral Processing Plant Rules**

In the submission, Idaho made changes to streamline the permit process for rock crushers, asphalt plants, and other portable equipment used to process nonmetallic minerals. Instead of continuing to require that a regulated rock crusher obtain a permit to construct before starting operation, Idaho created a permit by rule that establishes controls and other operating parameters that apply to an eligible source upon registration with the Idaho Department of Environmental Quality.

These requirements are codified at IDAPA 58.01.01.790 through 799 *Rules for the Control of Nonmetallic Mineral Processing Plants*. Sources that register and operate in compliance with the rules are considered to have a “permit by rule.” Only minor sources that operate for less than twelve consecutive months at a single location are eligible for the permit by rule. Sources covered by the Federal New Source Performance Standards (NSPS) at 40 CFR part 60, subpart OOO are not eligible, nor are new and modified major sources. By extension, rock crushers that are part of a new major source or proposed major modification are not eligible for the permit by rule.

The requirements for eligible nonmetallic mineral processing plants specify that obtaining a permit by rule does not relieve the owner or operator of an eligible source from the responsibility of complying with other federal, state and local applicable laws, regulations, and requirements. The rules make clear that sources subject to the NSPS for Nonmetallic Mineral Processing Plants, or the NSPS for Portland Cement Plants or Hot Mix Asphalt Plants, must continue to comply with the NSPS limits and controls, as

applicable. Provisions in the rules related to NSPS and title V source operating permits (IDAPA 58.01.01.792 and IDAPA 58.01.01.794.04) are generally not appropriate for SIP approval because they are not intended to implement the requirements of CAA section 110. Moreover, the NSPS for Nonmetallic Mineral Processing Plants, codified at 40 CFR part 60, subpart OOO, applies to affected facilities by its terms regardless of Idaho's rule. *See* 40 CFR 60.670.

The nonmetallic mineral processing plant rules set out the registration process and operating parameters for rock crushers and other eligible sources, including limits on the hours of operation, fuel consumption rates, best management practices, and general controls designed to ensure compliance with the NAAQS. The registration procedures for the permit by rule are contained in IDAPA 58.01.01.795 through 799. Owners and operators may choose to operate an eligible plant under the permit by rule by registering the new or modified processing plant fifteen days prior to commencing operation or modification. As part of the registration, the owner or operator must supply information, such as manufacturer, model, and throughput capacity, on the rock crushers, screen decks, and electric generators proposed to be part of the processing plant.

Owners and operators who register their nonmetallic mineral processing plants are deemed to have a permit by rule if they operate the plants in accordance with the applicable substantive requirements. In general, the rules prohibit emissions that would be injurious to human health or welfare, animal or plant life, or property, or that would interfere unreasonably with the enjoyment of life or property. In addition, owners and operators of eligible sources must take all reasonable precautions to prevent the



generation of fugitive dust, in addition to meeting specific opacity standards spelled out for categories of activities at areas of operation.

Specific requirements sources must meet include fuel restrictions, limits on operating hours, and monitoring and recordkeeping requirements for electrical generators at a source. For example, electrical generators must run on American Society of Testing and Materials (ASTM) Grade 1 or 2 fuel oil and must also meet specific sulfur content in fuel restrictions. Sources also must restrict visible emissions from various activities to 20% opacity or less, aggregating more than three minutes in any sixty minute period. NSPS-regulated processing plants are held to stricter opacity limits.

In addition to meeting opacity limits, sources must use best management practices to limit fugitive dust from the operation, including controls on paved public roads, unpaved haul roads, transfer points, screening operations, stacks and vents, crushers and grinding mills, and stockpiles. These best management practices are triggered during the course of operations, for instance when observed visible emissions from vehicle traffic approaches the opacity limit, or when citizen complaints come in that have merit. Sources must maintain a daily record of observing the operation, including when events trigger required control strategies and the corrective actions taken.

Idaho also amended IDAPA 58.01.01.011 to include new terms supporting the nonmetallic mineral processing plant rules. The new definitions include: “Best Management Practice,” “Control Strategy Trigger,” “Nonmetallic Mineral Processing Plant,” “NSPS Regulated Facility or Plant,” “Permit by Rule,” “Progressive Control Strategy,” and “Site of Operations.”

The EPA proposes to determine that the permit by rule provisions for rock crushers and other nonmetallic mineral processing plants are consistent with the types of permit terms and conditions that are generally used when issuing source-specific permits to sources in this category, and may in fact be more prescriptive. We also propose to conclude that the addition of the nonmetallic mineral processing rules are consistent with the CAA and the EPA's implementing regulations at 40 CFR 51.160 through 164. We are therefore proposing to approve IDAPA 58.01.01.011 and IDAPA 58.01.01.790 through 799 into the Idaho SIP, except IDAPA 58.01.01.792, and IDAPA 58.01.01.794.04 because they are not related to the requirements of CAA section 110 and are inappropriate for SIP approval.

### **C. Sulfur Content of Fuels Provision**

The Idaho sulfur content of fuels provision regulates the sulfur dioxide emissions from stationary sources by setting limits on the sulfur content of residual fuel oil, distillate fuel oil, and coal that is sold, distributed, used, or made available in Idaho. The provision is located in IDAPA 58.01.01.725 *Rules for Sulfur Content of Fuels*. In the submission, Idaho revised the rule provision to allow a stationary source – when applying for a permit to construct or operate – to request an alternative method to comply with sulfur in fuel limits. The revision specifies that the alternative may only be allowed if the applicant demonstrates that sulfur dioxide emissions would be equal to or less than emissions would be under the prescribed sulfur content of fuel limits. In other words, to get approval to use a fuel with higher sulfur content, a stationary source must show that, by installing a control device, the source can reduce hourly controlled emissions to less than the maximum hourly emissions from combusting complying fuels.

If a demonstration meets the rule requirements, the Idaho Department of Environmental Quality may approve the alternative compliance method into a stationary source permit to construct or operating permit. Any permit issued must contain the appropriate source monitoring, record-keeping and reporting requirements, for ensuring compliance, in accordance with Idaho's federally-approved permit to construct and operating permit programs.

We note that this rule revision alone does not allow the Idaho Department of Environmental Quality to relax any existing permit limits or conditions without also ensuring compliance with existing permit rules. In addition, any modification required for a stationary source to combust higher sulfur fuels, even without increasing allowable emissions, may be subject to preconstruction permitting rules.

Based on the information above, we conclude that the rule change is designed to protect the NAAQS, and we propose to approve and incorporate by reference the revision to IDAPA 58.01.01.725 *Rules for Sulfur Content of Fuels*.

#### **D. Definitions and Baselines for Fine Particulate Matter**

In the submission, Idaho revised IDAPA 58.01.01.006 *General Definitions* to clarify that the definition of "Criteria Air Pollutant" includes fine particulate matter (PM<sub>2.5</sub>), and added specific definitions for PM<sub>2.5</sub> and PM<sub>2.5</sub> emissions. Idaho also updated the *Baselines for Prevention of Significant Deterioration* rule section to add major and minor source baseline dates for PM<sub>2.5</sub>. We propose to approve these revisions as consistent with the CAA, the EPA's fine particulate matter standards set forth at 40 CFR 50.18, and major and minor source baseline dates and area requirements detailed at 40 CFR 51.166(b)(14) and (15). We note that, consistent with our previous action on March

3, 2014, we are not approving the terms defined in sections .49, .50, .51, .66, .67, .68.b, .114, and .116 because these terms relate to toxic air pollutants, not the criteria pollutants and the requirements of CAA section 110 (79 FR 11711).

#### **E. Incorporation by Reference Updates**

Idaho revised section .03 of IDAPA 58.01.01.107 *Incorporations by Reference* by updating the citation dates that incorporate federal provisions effective as of that date. Paragraph .a incorporates by reference the Requirements for Preparation, Adoption, and Submittal of Implementation Plans, 40 CFR part 51, with the exception of certain visibility-related provisions, effective July 1, 2014. We note that Idaho did not submit updates to the incorporation of federal provisions relied on as part of the State's nonattainment area major stationary source preconstruction permitting program.

Paragraphs .b, .d, and .e of the same section incorporate the following provisions effective July 1, 2014: .b National Primary and Secondary Ambient Air Quality Standards, 40 CFR part 50; .d Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR part 53; and .e Ambient Air Quality Surveillance, 40 CFR part 58. We propose to find that paragraphs .b, .d, and .e are consistent with CAA requirements. Idaho did not submit paragraphs .f through .n for approval because the provisions are not related to CAA section 110 and the criteria pollutants, and are inappropriate for SIP approval.

Paragraph .c incorporates the Approval and Promulgation of Implementation Plans, 40 CFR part 52 subparts A and N, and appendices D and E. This includes the Federal Prevention of Significant Deterioration (PSD) permitting rules at 40 CFR 52.21, effective July 1, 2014. We propose to find that paragraph .c is consistent with CAA

requirements. We note that specific federal PSD permitting rules have been vacated and remanded by the courts to the EPA. Idaho has responded by submitting rule changes to align the Idaho SIP with the court decisions. Please see Section III. F. below.

## **F. Effect of Court Decisions Vacating and Remanding Certain Federal Rules**

### **1. PM<sub>2.5</sub> PSD Provisions**

As discussed above, Idaho incorporates by reference federal PSD permitting requirements. The current Idaho SIP incorporates these rules, codified at 40 CFR 52.21, as of July 1, 2012, except revisions to 40 CFR 52.21(i) (relating to the significant monitoring concentration (SMC)) and 40 CFR 52.21(k) (relating to the significant impact level (SIL)) that added a SMC and SIL for PM<sub>2.5</sub> as part of the 2010 PSD PM<sub>2.5</sub> Implementation Rule (October 20, 2010, 75 FR 64864). We partially disapproved Idaho's previous submittal incorporating these provisions because they were vacated by a court after Idaho had already adopted and submitted them to the EPA (April 7, 2015, 80 FR 18526).

On January 22, 2013, the U.S. Court of Appeals for the District of Columbia, in *Sierra Club v. EPA*,<sup>3</sup> issued, with respect to the SMC, a judgment that, among other things, vacated the provisions adding the PM<sub>2.5</sub> SMC to the federal regulations at 40 CFR 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c). In its decision, the Court held that the EPA did not have the authority to use SMCs to exempt permit applicants from the statutory requirement in section 165(e)(2) of the CAA that ambient monitoring data for PM<sub>2.5</sub> be included in all PSD permit applications. Thus, although the PM<sub>2.5</sub> SMC was not a required element of a state's PSD program, where a state PSD program contains such a provision and allows issuance of new permits without requiring ambient PM<sub>2.5</sub>

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<sup>3</sup> 703 F.3d 458 (D.C. Cir. 2013).

monitoring data, such application of the vacated SMC would be inconsistent with the Court's opinion and the requirements of section 165(e)(2) of the CAA.

At the EPA's request, the decision also vacated and remanded the portions of the 2010 PSD PM<sub>2.5</sub> Implementation Rule that revised 40 CFR 51.166 and 40 CFR 52.21 related to SILs for PM<sub>2.5</sub>. The EPA requested this vacatur and remand of two of the three provisions in the EPA regulations that contain SILs for PM<sub>2.5</sub> because the wording of these two SIL provisions (40 CFR 51.166(k)(2) and 40 CFR 52.21(k)(2)) is inconsistent with the explanation of when and how SILs should be used by permitting authorities that we provided in the preamble to the **Federal Register** publication when we promulgated these provisions. The third SIL provision (40 CFR 51.165(b)(2)) was not vacated and remains in effect. We also note that the Court's decision does not affect the PSD increments for PM<sub>2.5</sub> promulgated as part of the 2010 PSD PM<sub>2.5</sub> Implementation Rule.

On December 9, 2013, the EPA amended its regulations to remove the vacated PM<sub>2.5</sub> SILs and SMC provisions from the federal PSD regulations (78 FR 73698). In response, Idaho updated the incorporation by reference of federal PSD regulations to July 1, 2014, capturing the EPA's removal of the vacated provisions. Idaho also revised the ambient air quality analysis requirements for major sources seeking PSD permits (IDAPA 58.01.01.202 *Permit to Construct*, at section .01) to clarify the appropriate use of a SIL and reference the federal PSD regulation listing SILs. We propose to find that these revisions are consistent with the Court's opinion and current EPA PSD regulations.

## **2. PSD Deferral of Certain Emissions from Biogenic Sources**

In 2011, the EPA revised the definition of “subject to regulation” at 40 CFR 52.21(b)(49)(ii)(a). The intent was to defer for three years (until July 21, 2014) PSD permitting for carbon dioxide (CO<sub>2</sub>) emissions from bioenergy and other biogenic stationary sources (Deferral for CO<sub>2</sub> Emissions from Bioenergy and Other Biogenic Sources under the Prevention of Significant Deterioration (PSD) and Title V Programs; Final Rule (July 20, 2011, 76 FR 43490) (Biogenic CO<sub>2</sub> Deferral Rule)). Idaho’s SIP incorporates by reference federal PSD permitting rules and includes this deferral provision.

On July 12, 2013, the U.S. Court of Appeals for the District of Columbia, in *Center for Biological Diversity v. EPA*,<sup>4</sup> vacated the Biogenic CO<sub>2</sub> Deferral Rule. The deferral expired on July 21, 2014, and by its terms is no longer in effect.

### **3. PSD Greenhouse Gas Tailoring Rule**

On June 23, 2014, the United States Supreme Court, in *Utility Air Regulatory Group v. Environmental Protection Agency*,<sup>5</sup> issued a decision addressing the application of PSD permitting to greenhouse gas (GHG) emissions. The Supreme Court said that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source (or modification thereof) required to obtain a PSD permit. The Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limits on GHG emissions based on the application of Best Available Control Technology (BACT).

In order to act consistently with its understanding of the Court’s decision, pending further judicial action before the U.S. Court of Appeals for the District of Columbia to

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<sup>4</sup> 722 F.3d 401 (D.C. Cir. 2013).

<sup>5</sup> 134 S.Ct. 2427 (2014).

effectuate the decision, the EPA is not continuing to apply the EPA regulations that would require SIPs to include permitting requirements that the Supreme Court found impermissible. Specifically, the EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (*e.g.* 40 CFR 51.166(b)(48)(v)).

The EPA recently revised federal PSD rules in light of the Supreme Court decision (May 7, 2015, 80 FR 26183). In addition, we anticipate that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. We do not expect that all states have revised their existing PSD program regulations yet, however, we are evaluating submitted PSD program revision to ensure that the state's program correctly addresses GHGs, consistent with the Court's decision.

Idaho's current SIP contains the GHG permitting requirements reflected in 40 CFR 52.21, as amended in the Tailoring Rule. As a result, the PSD permitting program in Idaho, previously approved into the SIP, continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limits on GHG emissions, based on the application of BACT, when sources emit or increase GHGs in the amount of 75,000 tons per year (measured as carbon dioxide equivalent).

Although the approved Idaho PSD permitting program may also currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not prevent the EPA from approving this SIP submission. Idaho's submission does not add any GHG permitting requirements that are inconsistent with the Supreme Court



decision. While Idaho's submission incorporates all of 40 CFR 52.21 for completeness, the submission reincorporates PSD requirements for GHGs already in the Idaho SIP.

#### **IV. Proposed Action**

We propose to approve, and incorporate by reference into the Idaho SIP, changes to the following provisions submitted on May 21, 2015:

- IDAPA 58.01.01.006 *General Definitions*, except .49, .50, .51, .66, .67, .68.b, .114, and .116 (State effective 4/11/2014);
- IDAPA 58.01.01.011 *Definitions for the Purposes of Sections 790 through 799* (State effective 3/15/2002);
- IDAPA 58.01.01.107 *Incorporations by Reference*, except .03.f through .n, and with respect to .a, the incorporation by reference of 40 CFR 51.165 (State effective 4/11/2015);
- IDAPA 58.01.01.157 *Test Methods and Procedures* (State effective 4/11/2015);
- IDAPA 58.01.01.175 *Procedures and Requirements for Permits Establishing a Facility Emissions Cap* (State effective 4/11/2015);
- IDAPA 58.01.01.176 *Facility Emissions Cap*, except for provisions relating to hazardous air pollutants (State effective 4/11/2015);
- IDAPA 58.01.01.177 *Application Procedures* (State effective 4/11/2015);
- IDAPA 58.01.01.178 *Standard Contents of Permits Establishing a Facility Emissions Cap* (State effective 4/11/2015);
- IDAPA 58.01.01.179 *Procedures for Issuing Permits Establishing a Facility Emissions Cap* (State effective 4/11/2015);

- IDAPA 58.01.01.180 *Revisions to Permits Establishing a Facility Emissions Cap* (State effective 4/11/2015);
- IDAPA 58.01.01.181 *Notice and Record-Keeping of Estimates of Ambient Concentrations* (State effective 4/11/2015);
- IDAPA 58.01.01.201 *Permit to Construct Required* (State effective 4/11/2006);
- IDAPA 58.01.01.202 *Application Procedures* (State effective 4/11/2015);
- IDAPA 58.01.01.401 *Tier II Operating Permit*, except .01.a and .04, (State effective 4/11/2006);
- IDAPA 58.01.01.579 *Baselines for Prevention of Significant Deterioration* (State effective 4/11/2015);
- IDAPA 58.01.01.725 *Rules for Sulfur Content of Fuels* (State effective 4/11/2015);
- IDAPA 58.01.01.790 *Rules for the Control of Nonmetallic Mineral Processing Plants* (State effective 3/15/2002);
- IDAPA 58.01.01.791 *General Control Requirements*, (State effective 3/15/2002);
- IDAPA 58.01.01.793 *Emissions Standards for Nonmetallic Mineral Processing Plants not Subject to 40 CFR 60, Subpart OOO* (State effective 3/15/2002);
- IDAPA 58.01.01.794 *Permit Requirements*, except .04 (State effective 4/11/2015);
- IDAPA 58.01.01.795 *Permit by Rule Requirements* (State effective 3/15/2002);
- IDAPA 58.01.01.796 *Applicability* (State effective 3/15/2002);
- IDAPA 58.01.01.797 *Registration for Permit by Rule* (State effective 3/15/2002);
- IDAPA 58.01.01.798 *Electrical Generators* (State effective 3/15/2002); and

- IDAPA 58.01.01.799 *Nonmetallic Mineral Processing Plan Fugitive Dust Best Management Practice* (State effective 3/15/2002).

## **V. Incorporation by Reference**

In this rule, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are proposing to incorporate by reference the provisions described above in Section IV. Proposed Action. The EPA has made, and will continue to make, these documents generally available electronically through <http://www.regulations.gov> and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

## **VI. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because it does not involve technical standards; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

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